



European Defence Agency: Procurement

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The European Defense Agency (EDA) has just launched a Voluntary Code of Conduct on Defense Procurement. Most of the European Union (EU) 25 Member Countries has signed on to it, with the exception of Spain, Hungary and Denmark. Spain and Hungary are reserving judgment and Denmark does not participate in the EDA.

The "Code of Conduct on Defence Procurement" is a voluntary regime for contracts in excess of €1 million, and was hammered out by the majority of Defense ministers of the European Union, with the idea to make public on a reciprocal basis, the tenders between those countries subscribing to the regime for many items that have historically been kept out of the EU common market. The Code of Conduct is designed to prevent the routine invocation of Article 296 of the Treaty establishing the European Community, which exempts defense procurement from the rules of the EU common market for reasons of national security.

The Member States have agreed to do this in an effort to consolidate the market and improve their economies of scale to strengthen the European defense equipment market, and in the hopes of increasing the European technological base in the defense industry. There are still exemptions for the procurement of

- Research and technology
- Nuclear weapons and nuclear propulsion systems
- Chemical, bacteriological and radiological goods and services
- Cryptographic equipment
- In cases of operational urgency
- For extraordinary and compelling reasons of national security

The Code of Conduct commits subscribing Member States to publicize their procurement opportunities on an Electronic Bulletin Board, which will be operated by the European Defence Agency (EDA). The EDA will also monitor the system and plans to challenge any member state that invokes the Article 296 exemption to explain why that is necessary, although no real sanctions are envisioned. When it is launched in early July, an EDA official has confirmed that it will be publicly available on the Internet for anyone, including American companies, to read. This will go a long way to make the defense market opportunities in the European Union more transparent, although U.S. based firms may still be excluded from bidding according to the specifications of the individual nations. There is also nothing to prevent any Member State country from allowing American domiciled companies to bid in their countries. European-based firms of American parentage should be allowed to bid on the procurement opportunities in the same way that they are able to bid on them currently.

Underpinning the regime is a Code of Best Practice in the Supply Chain, approved by the Defense Ministers in May, designed to assist small to medium sized sub-contractors across the European Union to participate on an equal footing in other member states for portions of defense contracts.

It is expected that, in lieu of any real teeth to the Code of Conduct, the actual practice of mutual transparency and accountability will support the growth of confidence but that initially, the embarrassment factor of being challenged by the EDA will serve to get the project running.

The Bulletin Board can be seen at <http://www.eda.europa.eu/ebbweb/>. General information is available on the EDA's website at <http://www.eda.europa.eu/edemregime/edemregime.htm>

For More Information

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